

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

MICHAEL WHALEY	§	
VS.	§	CIVIL ACTION NO. 5:11cv141
DIRECTOR, TDCJ	§	

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Michael Whaley, an inmate confined at the Telford Unit, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The Court referred this matter to the Honorable Caroline Craven, United States Magistrate Judge, at Texarkana, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends the petition be dismissed.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the Court concludes petitioner's objections should be overruled. Petitioner apparently intended to file the document which was filed as the original petition in this action as an amended petition in civil action number 5:11cv100, styled *Whatley v. Director*; however, he failed to include the case number on the document. Accordingly, this petition should be dismissed, and a copy of the original petition should be filed as an amended petition in the above-reference petition.

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. It is further

ORDERED that the Clerk of Court is **DIRECTED** to file a copy of the original petition in this action (docket entry no. 1) as an amended petition in civil action number 5:11cv100, styled *Whatley v. Director*. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

SIGNED this 30th day of September, 2011.

A handwritten signature in black ink, appearing to read "David Folsom", is written over a horizontal line.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE